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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,547	07/22/2003	Van Miller	1358-06	6039

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GOWAN INTELLECTUAL PROPERTY
1075 NORTH SERVICE ROAD WEST
SUITE 203
OAKVILLE, ON L6M-2G2
CANADA

EXAMINER	
PEARSE, ADEPEJU OMOLOLA	
ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/623,547	MILLER, VAN	
	Examiner	Art Unit	
	Adepeju Pearse	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 July 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites, "having a predetermined milk fat content". It is unclear how this content is determined and what range constitutes the weight content. For examining purposes it will be assumed that any milk fat content would be sufficient for both components i.e. the liquid milk and dried milk.

3. With regard to claim 8, it is unclear how this claim further limits claim 7, because the claim recites "wherein said first and second predetermined milk fat contents", this recitation is not in claim 7.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hatmaker (US Pat. No. 1,626,818) in view of Robinson (US Pat. No. 3,643,586), MooMilk FAQ and FDA (21 CFR 131.110 and 131.120). With regard to claim 1, Hatmaker discloses a method of making condensed milk comprising combining fresh liquid milk from cows with dry liquid milk and incorporating the components thoroughly by agitation, stirring or otherwise in order to produce a condensed milk that contains much more milk solids (col 1 lines 6-25, lines 30-33). The mixture maybe pasteurized to render it more conservable (col 2 lines 75-78). However, Hatmaker is silent about the milk solids content of the condensed milk and the milk solids of the liquid milk, packaging of the milk and permitting the mixture to stand for a time period. The FDA (Food and Drugs Administration) in 21 CFR 131.110 states that milk obtained from cows in its final package form for beverage use shall not contain less than 8.25% milk solids not fat and not less than 3.25% milk fat and in 21 CFR 131.120 states that sweetened condensed milk shall not contain less than 8% by weight of milk fat and not less than 28% by weight of total milk solids. It would be obvious to one of ordinary skill in the art to modify the teachings taught by Hatmaker with the FDA regulations because the FDA governs the safety and efficacy of food products and therefore having a condensed milk with a milk solids content above 28% would have been obvious as disclosed by applicant. Also, the milk solids (approx. 12%) of the liquid milk as stated by FDA is within applicant's recited range. In addition, it would have been obvious to one of ordinary skill in the art to expect that the mixture could be permitted to stand for a period of time in order to incorporate the components thoroughly as disclosed by Hatmaker

and it is well known that condensed milk is packaged after processing for consumer use as taught by Robinson that teaches aseptically packaging foods such as condensed milk that are susceptible to microbial action or by oxidation (col 8 lines 11-19).

7. With regard to claim 2, Hatmaker discloses fresh liquid milk from cows. It would be obvious to one of ordinary skill in the art to expect that this is raw milk because it has not been processed.

8. With regard to claims 3-4, Hatmaker failed to disclose the temperature to process and store raw milk. However, milk FAQ teaches that milk leaving a cow is stored at 40°F because raw milk has a shorter shelf life. It would be obvious to one of ordinary skill in the art to modify Hatmaker with the teaching of milk FAQ in order to preserve the raw milk because of its shorter shelf life.

9. With regard to claim 5, Hatmaker failed to disclose holding the mixture for a time period. However, it would have been obvious to one of ordinary skill in the art to expect that the mixture could be permitted to stand for a period of time in order to incorporate the components thoroughly.

10. With regard to claim 6, Hatmaker discloses combining fresh liquid milk from cows with dry liquid milk and incorporating the components thoroughly by agitation, stirring or otherwise in order to produce a condensed milk that contains much more milk solids (col 1 lines 6-25, lines 30-33).

11. With regard to claims 7-8, Hatmaker discloses that the milk powder is derived from the fresh liquid milk (col 1 lines 15-20) but failed to disclose the milk fat content. The FDA (Food and Drugs Administration) in 21 CFR 131.110 states that milk obtained from cows in its final

package form for beverage use shall not contain less than 8.25% milk solids not fat and not less than 3.25% milk fat. This amount is within applicant's range and therefore it would be obvious to one of ordinary skill in the art to modify the teaching of Hatmaker to incorporate the FDA regulations because the FDA governs the safety and efficacy of food products and therefore having liquid milk with a milk fat content as recited by applicant would have been obvious.

12. With regard to claim 9, Hatmaker discloses that more or less dry milk may be added to the natural milk to produce condensed milk of varying proportions of solid matter but failed to disclose an amount, this is seen to be an experimental result variable based on the amount of milk solids required in the final product. In addition, Hatmaker failed to disclose the milk solids of the liquid milk and the milk solids content of the mixture. However, the FDA (Food and Drugs Administration) in 21 CFR 131.110 states that milk obtained from cows in its final package form for beverage use shall not contain less than 8.25% milk solids not fat and not less than 3.25% milk fat, giving a total milk solids within applicant's recited range. In addition, 21 CFR 131.120 states that sweetened condensed milk shall not contain less than 8% by weight of milk fat and not less than 28% by weight of total milk solids. It would be obvious to one of ordinary skill in the art to modify the teachings taught by Hatmaker with the FDA regulations because the FDA governs the safety and efficacy of food products and therefore having a condensed milk with a milk solids content above 28% would have been obvious as disclosed by applicant.

13. With regard to claim 10, Hatmaker failed to disclose evaporating off water from the condensed milk. However, it is well known that condensed milk is sweetened evaporated milk

and is more viscous. Evaporating a percentage of the weight is seen as an experimental result variable depending on the level of viscosity needed.

14. With regard to claim 11, Hatmaker failed to disclose adding a sweetener to the mixture. However, FDA 21 CFR 131.120 teaches a sweetened condensed milk. It would be obvious to one of ordinary skill in the art to expect that a sweetener is added to the mixture and is milk-compatible.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pearse

MILTON I. CANO
SUPERVISORY PATENT EXAMINER